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CURRENT TOPICS

Conveyancing Costs: Enforceability of Oral Agreement to Charge Less than Scale

Is a solicitor bound by an oral agreement to charge less than the authorised scale for conveyancing? An agreement between a solicitor and his client with regard to the amount of his charges for non-contentious business must, under s. 57 (3) of the Solicitors Act, 1932, be in writing. In *Re a Solicitor* (*The Times*, 19th October) it was argued for a client that ss. 57 and 59 had the opposite result and that *Jennings* v. *Johnson* (1873), L.R. 8 C.P. 425, and *Clare* v. *Joseph* [1907] 2 K.B. 369 were authorities to that effect. The master held that the subject matter of those two cases related to contentious business, and that non-contentious business was governed by the Solicitors' Remuneration Act, 1881. The separation of the two classes of business had been maintained by the Solicitors Act, 1932. In upholding the master's decision Mr. Justice PEARSON declined to decide whether *Jennings* v. *Johnson* and *Clare* v. *Joseph* would still be held good, as it was unnecessary to do so in view of the plain words of ss. 57 and 59 of the 1932 Act.

Reporting of Accidents

A FULL report is now available in the *Scots Law Times* ([1955] S.L.T. 367) of the decision, already referred to by an English contemporary of ours, in *Tucker* v. *Mackenzie*. The appellant was the driver of a motor van which collided with a wooden fence, knocking down the fence and damaging the van. Apparently there were no other ill-effects of the accident. The damage to the fence did not of itself, consistently with *Pagett* v. *Mayo* [1939] 2 K.B. 94, lay upon the appellant any duty under s. 22 of the Road Traffic Act, 1930, to leave his particulars or to report the occurrence to the police; it was not "damage or injury to any person, vehicle or animal." The High Court of Justiciary accepted that this was so. Nevertheless, the appellant had been charged with failing to report, and the question remained whether that charge was sustainable on the footing that the damage to the appellant's own vehicle brought the case within the mischief of s. 22. A majority of the court held that it did. "Any vehicle" must include the driver's own. The section deals with accidents due to the presence of a motor vehicle on the road and contains no words which would exclude that vehicle in enumerating the contemplated subjects of damage. The decision is, if we may say it, an impeccable piece of construction of plain words. But the respondent prosecutor appears not unnaturally to have apprehended some embarrassment from so sweeping a victory for his case. His counsel had preferred to challenge *Pagett* v. *Mayo*, for he conceded that the burden on the police would be intolerable if some injury (which he interpreted to include injury to a proprietary interest in property) to another person besides the driver had not to be involved before an accident was reportable. Well, if this decision is allowed to remain law, the Scottish police have

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their intolerable burden. We are not the first to wonder just how the station sergeant will express himself when a motorist arrives with tidings of a punctured tyre owing to the joint presence on a road of his car and a piece of glass. Perhaps what is really wanted is a satisfactory definition of an accident.

Legal Aid: Wrong Assessments of Means

THE assessment of the means of an applicant for a civil aid certificate is not always infallible, and the Legal Aid Regulations make special provision for a revision of the assessment in case of mistake. A wife's contribution to legal aid was assessed in a case before the PRESIDENT on 19th October (*The Times*, 20th October) at £83 on the basis of income from her husband which was in issue in the proceedings in question. The case was an appeal from a magistrates' court's refusal to vary a previous order of £5 a week to be paid by the husband for his wife's maintenance and £1 10s. a week for his child's maintenance. The husband, who had obtained a civil aid certificate, was assessed at a nil contribution, and the wife, who as already noted had obtained a certificate, was assessed at £83 on the basis of this income from her husband which was in issue; but being quite unable to make such a contribution, she had not taken up the certificate. The President said that he took strong exception to the wife's contribution having been assessed on the basis of an income which included the amount of her order, the amount of which was the very subject of the appeal. He had protested on previous occasions that this was absolutely contrary to s. 4 (3) of the Legal Aid and Advice Act, 1949. Having regard to the assessment of the husband's means, the court could not make an order for costs against him.

The Rent Acts and De-Control

HAS the Housing Repairs and Rents Act, 1954, given any substantial relief from the special disease that the Rent Acts have engendered? Anyone who does not hold that being a landlord is one of the deadly sins requiring perpetual punishment knows the disease, and LORD BROUGHSHANE deserves gratitude for describing it in fitting words in his letter to *The Times* on 17th October. Writing of inflation, he stated: "There are to-day several millions of families in the country with weekly incomes ranging from £10 to £30 whose weekly rent ranges between 10s. and 30s. This is due to the Rent Restrictions Acts." There was, in his view, little evidence or expectation, a year after the Housing Repairs and Rents Act became law, that it would achieve its purpose, and he suggested that, pending heroic measures which were required, it was worthwhile to consider amending the 1954 Act so that landlords would be granted income tax exemption in respect of the permitted rent increase, at least until the required expenditure had been recovered. One can foresee objections which will be made to the favouring of a class of taxpayers with a special privilege. As for "heroic remedies," we presume that something like a repeal of the Rent Acts is meant. Such heroism is hardly for politicians, but why should not a beginning be made now with gradual de-control, which advanced so far in the years before 1939?

The Magistrates' Association: Annual Meeting

THE annual meeting of the Magistrates' Association on 21st October rejected by a majority of 256 votes to 91 their own council's recommendation that the law should be altered so that homosexual conduct in private between consenting adults aged thirty or over should no longer be a criminal offence, except where a mental defective was concerned. Mr. FRANK POWELL spoke of the result of such an amendment; that an offence punishable with life imprisonment would cease to be an offence if committed after a person's thirtieth birthday, and said that he preferred British standards and the British way of life to that of other countries where such conduct was not a crime. Mr. J. P. EDDY, Q.C., asked what we were to gain by changing the law. "Surely," he said, "we should keep control of these offences, not necessarily with a view to punishing the offenders, but, if possible, to give them appropriate treatment." The meeting approved by 189 votes to 148 a resolution that the law relating to abortion be changed so that no doctor could be found guilty unless it were proved that the procuring of an abortion was not done in good faith to save the mother's life, or prevent serious injury to her, or in the belief that there was grave risk of the child's being born grossly deformed or incapable of normal physical or mental development.

Lawyers Don't Fight

OLD newspapers make good fodder for browsers. With appetites whetted by the morsels which the more venerable organs of the Press regularly mete out from their granaries of a hundred and more years ago, many will have eagerly devoured more than the first stirring pages of *The Times* souvenir reprint of its Trafalgar issue. Some will have lingered with particular relish over the advertisements of auction sales and patent medicines. Not many baritones, we imagine, will have taken into their repertoires the doggerel addition to "Rule, Britannia," sung, "with the most affecting expression" by Mr. Taylor at Covent Garden. We were disappointed in the Law Report, perhaps inevitably, for the Michaelmas Term did not in those days start until well into November. It would have been fascinating to read as of yesterday, without the trouble of visiting an archivist's library, some forgotten postlude, say to *Thellusson* v. *Woodford* (11 Vesey 112) decided earlier in the same year, itself a continuation of the more famous litigation under the same title. Or to have gauged by a contemporary measure the length of Lord Eldon's foot. All that the souvenir contains especially for us is an account of two separate motions by members of the legal profession for leave to file criminal informations for endeavouring to provoke the prosecutors into duelling. The attorney's prudent reply to his challenger was that he had a wife and children who depended upon him for support, whereupon he was called a coward in handbills posted at the coffee-houses and inns of Nottingham.

Road Accident Figures and Penalties

LAST year there were nearly 240,000 casualties on our roads, with more than 5,000 fatal. In 80,000 convictions for speeding in 1953 there were only 200 disqualifications. The average fine imposed was £2 10s. Two-thirds of those convicted in magistrates' courts of reckless or dangerous driving were not disqualified. In 25,000 convictions for careless driving only 600 people were disqualified. The average fine for this offence was less than £4. These were figures given by the Home Secretary, Major LLOYD-GEORGE, to the Magistrates' Association at their annual meeting on 21st October. He suggested that some courts, at any rate, should consider whether their practice is appropriate when judged by present-day standards and in the light of current conditions. In debates on the Road Traffic Bill now before Parliament, Major Lloyd George said that the comment had been made that the courts were too lenient in their treatment of certain classes of road offenders.

FOUR YEARS OF PLANNING

THE Ministry of Housing and Local Government have recently issued in the form of a blue book (Cmd. 9559, H.M.S.O., price 7s.) a report on their activities for the period 1950–51 to 1954. The book is a most interesting document, as the functions of the Ministry are manifold and touch on local affairs at many points. This article, however, confines its attention to the chapter headed "Planning," and is intended to draw attention to some of the more important statistics of interest to readers which are contained in it, with comment in particular on the submission of further town maps and comprehensive development area maps to the Minister.

This chapter is a continuation of the Progress Report on Town and Country Planning 1943–1951 (Cmd. 8204) issued some time ago by the then Ministry of Local Government and Planning, and covers the period from 30th January, 1951, to 31st December, 1954, i.e., four years save a month.

The first point that emerges is that by the end of 1954 the submission and approval of development plans was well under way. One hundred and forty-eight plans had then been submitted and only five had still to be sent in. Of the 148, however, only fifty-five had been approved by the Minister though a further eighty-nine were past the stage of inquiry into objections. Of much more interest and concern to readers is, however, the fact that at the end of 1954 the Ministry understood, according to the report, that no less than 500 more town maps and 100 comprehensive development area maps were in course of preparation.

These town maps will be within the areas of administrative counties as distinct from county boroughs. The comprehensive development area maps may be in counties or county boroughs.

All these maps will be submitted in the form of amendments to the approved development plans within the areas of which they lie. The procedure for the submission of amendments is similar to that for the submission of an original development plan, i.e., notice of the submission is advertised in the *London Gazette* and for two consecutive weeks in at least one local newspaper circulating in the area concerned. The notice will specify the period, not being less than six weeks from the date of the first local advertisement, within which objections may be submitted to the Minister.

The importance of carefully studying these maps when submitted and objecting if necessary cannot be over-emphasised, as they plan the areas they cover in considerable detail, and seems not to have been properly appreciated in the past, for the Progress Report states in relation to development plans that "... there seems to be little relationship between the nature of the proposals in a plan and the volume of objections. Some particular proposals—especially those for new roads affecting existing buildings—have attracted hundreds of objections. Others which appear equally disturbing have attracted none at all. In some cases the volume of objections seems to have arisen from vigorous action by one person or a group of people; in others the absence of objections may be a result of the trouble taken by the authority to explain to the public the significance of the various proposals shown in the plan."

The writer knows of cases now arising where owners who never objected at the appropriate time, owing to ignorance of the submission of the plan or otherwise, are finding that their property is adversely affected by some provision in an approved development plan. While the provisions of an approved plan are by no means inflexible but may be departed from for good cause, it is nevertheless the writer's belief that as a general rule it will be much more difficult to obtain planning permission for development which is not in accord with a plan than it would have been successfully to object to the particular proposal in the plan in the first place. Apart from anything else it must be remembered that other persons who duly inspected the plan when on deposit and accepted it may have, if not a legal right, at least a moral right to have the provisions of the plan respected, e.g., where persons have built houses in a residential zone since the approval of the plan it would hardly be fair to them to alter the zoning so as to permit a large factory to be erected at the end of their back gardens simply because the owner of the site did not see the plan and object in time. Or again, if land is allocated as an open space in a plan and the owner does not object, the authority may allow in accordance with the plan building on other land in the area which might have been put forward as an alternative if the owner of the open space land had objected in time.

The Town and Country Planning (Development Plans) Direction, 1954, is in this connection an important ministerial brake on the allowing by local authorities of any important departure from the provisions of a development plan. The following quotation from the Ministry's circular (No. 45/54) explaining the Direction gives an indication of the Minister's attitude to development plans: "Development plans are of importance to a very wide range of interests and in the public mind an authority's planning administration is likely to be judged on the degree of significance which is attached to the approved plan. It would, therefore, seem to the Minister to be a cardinal mistake if in availing themselves of the direction authorities showed any tendency to minimise the importance of the plan in favour of short-term considerations and to grant permission freely on the basis of a narrow interpretation of 'substantial departure' or of 'the amenity of adjoining land'."

In the writer's experience the Minister's practice in dealing with applications referred to him under the Direction bears this out. On the reference of an application to him the Minister may, if good cause is shown in the letter of reference, raise no objection to the grant of permission, but in other cases he may require the local authority to withhold permission while further investigation is made, or he may direct them to refuse permission. In the last-mentioned event the applicant may, of course, appeal to the Minister in the usual way, and it should not be thought that his case is hopeless, as it will usually be found that the direction for refusal is expressed to be given on "the information at present before the Minister." It may be possible at any local inquiry into the appeal to put the Minister into very much fuller information justifying the allowance of the appeal.

The Progress Report records that from 25th June, 1954, when the Direction came into effect, up to the end of 1954 109 cases had been reported to the Minister under the Direction, but it was too early to say how the procedure was working.

All this emphasises the importance of studying the further 500 town maps and 100 comprehensive development area maps when advertised and of objecting, if necessary, in time. Quite apart from the rather negative aspect of advising on objections, early knowledge of what the maps contain may enable the reader to give useful advice to clients about development of their land and the future commercial prospects of the area generally.

Notes of any notices of the submission of amendments to development plans embodying these maps appear in this journal as and when they are published in the *London Gazette*. An article on the details to be found in town maps and comprehensive development area maps, and their associated programme maps and written statements, with notes on the significance of the proposals and suggested reasons for objections, was published at 95 SOL. J. 423, 439 and 458. This, together with the substance of the article on the Development Plans Direction, 1954, which appeared at 98 SOL. J. 531, is now included in up-to-date form in the Solicitors' Guide to Development and Planning, 2nd ed.

The Progress Report gives some interesting statistics of planning appeals. With the increased activity in development resulting from the abandonment of building licensing controls and the abolition of development charge these rose from 3,528 in 1951 to 5,208 in 1954. The sharp rise in the number of appeals has resulted, the report states, in some delay in deciding them; steps taken in 1953 to improve the rate of deciding appeals only sufficed to prevent the position deteriorating and further steps were being taken at the end of 1954 with a view to improving the situation and further reducing the time taken to decide appeals.

Of the 4,928 appeals actually disposed of in 1954, 1,761 were withdrawn by the appellants and 3,167 decisions were issued, of which 1,337 allowed the appeals and 1,830 dismissed them. Comparative figures are given for the three preceding years and these show a slight tendency for the number of appeals dismissed to rise in proportion to the number allowed. The number allowed is, however, still very high and indicates that an appeal is in very many cases worth while. The appeal decisions, though not the results, are also classified by types and the figures show that the most common type of appeal is that relating to single houses in rural areas (792), followed by those relating to housing estates (235), caravan sites (189), change of use to offices (156), substandard dwellings (143) and garages (137), and various other types.

During the four years covered by the report 425 orders were submitted under s. 21 of the Town and Country Planning Act, 1947, revoking or modifying planning permissions; 287 were confirmed, 126 were not confirmed or were withdrawn and 58 were still under consideration; 86 orders were submitted during this period under s. 26 of the Act requiring the demolition or alteration of authorised buildings or works or the discontinuance of an authorised use, and 69 were confirmed, 22 were not confirmed and 13 were still under consideration. Taken by and large, therefore, the risk of action under these two sections does not seem to be very great.

The Progress Report contains a great variety of other information on the work of the Ministry generally, which cannot fail to be of interest to those readers who are interested in the local government services or are of a statistical turn of mind.

R. N. D. H.

PAYMENT OF COMMISSION AFTER TERMINATION OF AGENCY

A DISCUSSION of any problem in the law of agency must inevitably require close attention to particular facts. Agency is a contractual relationship and, consequently, the rights and liabilities of the parties fall to be determined by reference to the contract between them. One of the principal difficulties is that, in the words of the layman, frequently there "isn't any contract." By this, it is usually meant that the terms of employment of the agent are not to be found in any formal document, but have to be determined by reference to imperfectly remembered conversations or, possibly, a letter or two. In either case the available evidence is said to be only part of the story: the parties being in violent conflict as to the other part.

Agency agreements are frequently concluded by correspondence or verbally between the parties without either of them seeking legal advice, or even seriously considering any of the possible circumstances that may arise apart from the amount of, and payment of, commission: and even these two important points are not always fully and unambiguously covered. Consequently, such principles as can be extracted are generally derived from cases where the court has had to construe an odd word or phrase, in a letter or conversation, which the author probably never visualised as being used as the foundation for an action at law.

The type of transaction it is proposed to consider in this article is one where the commission is said to be payable not only once but several times, and possibly after a purported termination of the agency, on the repetition of a certain event or certain events. The obvious and simple example is the case where a commercial agent or representative obtains orders for the purchase of his principal's goods. As Sir Raymond Evershed, M.R., observed in *Sellers* v. *London Counties Newspapers* [1951] 1 All E.R. 544, at p. 549: "It is one of the characteristics of the cases on this subject-matter that they are, for the most part, most scantily reported."

"Repeats"

A good example of the type of case that is met with in practice is *Crocker Horlock, Ltd.* v. *Lang & Co.* [1949] 1 All E.R. 526, where the plaintiffs were representatives for clothing manufacturers. Two agreements, both by letter and both for fixed terms, provided in one case for "commission to be 5 per cent. on all orders, whether received direct or indirect, and on all repeats," and, in the other case, for "commission to be 2½ per cent. on all orders received, and on all repeats whether received direct or indirect." The defendants having repudiated the agreements, the question arose whether the plaintiffs were entitled to commission on repeats received by the defendants after the due date for the determination of the agreements.

Morris, J., held on the construction of the documents that the word "repeats" meant only repeat orders received during the period of the contract. He warned against the danger of seeking too much guidance from any decisions in regard to other words in other contexts, and referred to the judgment of Atkin, L.J., in *Cramb* v. *Goodwin* (1919), 35 T.L.R. 477, on the construction of business documents, and the little assistance that can be obtained from other decisions. Other decisions were not of much use or guidance unless they were fully reported, setting out the circumstances in which the agreement was made and the terms of the agreement.

Continuous Agencies

Cases sometimes occur where the contract apparently provides for one party to receive remuneration for an indefinite period, without further effort on his part, as the result of one initial action on his part. Trouble arises when the

other party gets tired of paying the commission and, after a time, attempts to repudiate or purports to terminate the arrangement.

In *British Bank of Foreign Trade, Ltd.* v. *Novimex, Ltd.* [1949] 1 All E.R. 155, the defendants wrote to the plaintiffs agreeing to pay certain commission in respect of a consignment of oilskins from one of the plaintiffs' customers with whom the defendants, at the time, had no direct contact. They also undertook to pay an agreed commission on any other business transacted with the customers, in return for which the bank was to put the defendants in direct contact with the customers. This was done, but the defendants later refused to pay commission on subsequent transactions. The Court of Appeal held that, although, if the arrangements had been wholly executory on both sides, there might have been no binding contract, the plaintiffs had executed their part of the transaction, and the defendants were therefore bound to pay commission on all subsequent business with the customers, whether or not such business was a direct consequence of the plaintiffs' introduction.

In the course of his judgment Cohen, L.J., said (at p. 159): "I can see no difference in principle between a case where the service which is rendered is labour and the case where the service is an introduction. It seems to me here that, whatever the value of the service may be, the plaintiffs have rendered to the defendants the service which was intended to be the consideration for the agreement to pay commission on future orders. I cannot think there is a difference in principle between such a service and an agreement to serve an employer as a clerk or in any other capacity. The learned judge [Denning, J.] goes on to say that, in his view, it is impossible to apply the principle to the present case because there is so much left in the air. He says: 'Is commission to be payable until the crack of doom?' In my view, if the defendants go on dealing with Pritchard & Gee [the customers] until the crack of doom, they will have to go on paying commission to the plaintiffs, if they are in existence, until that doom occurs."

The answer suggested by the learned lord justice to the possibility that commission might be payable until the crack of doom was that, if the defendants did not wish to pay any further commission, they could cease to trade with the customers in question.

It is not thought that an alternative solution could be found by applying the principle of the decision of McNair, J., in *Martin-Baker Aircraft Co., Ltd.* v. *Canadian Flight Equipment, Ltd.* [1955] 3 W.L.R. 212; *ante*, p. 472, where his lordship held that the doctrine of irrevocability could not easily be applied to a contract in the commercial or mercantile field. In the *Martin-Baker* case the question arose whether an agreement whereby the defendants were to receive commission for obtaining orders in North America for the sale of aircraft ejection seats could be determined. The agreement contained provision for summary determination in certain events. It was held that on the true construction of the contractual documents a term would be implied that the agreement would be determinable by reasonable notice, which, in this case, was twelve months.

In considering whether any notice at all was necessary, his lordship said (at p. 229): "If it were a pure agency agreement and nothing more, there is much to be said for the view that it would be terminable summarily at any moment. But if an agreement of this nature has to be looked at as a whole, and the whole of its contents considered, and if one finds (as one finds here) that the person who is described as sole selling agent has to expend a great deal of time and money and is subject to restriction as to the sale of other persons' products which may be competitive, it seems to me that it is a form of agreement which falls much more closely within the analogy of the strict master and servant cases where admittedly the agreement is terminable not summarily—except in the event of misconduct—but by reasonable notice."

Performance Completed by Agent

There is a clear distinction between the two cases considered in the preceding section. In the *British Bank* case, the contract had been fully performed by the plaintiffs. There was nothing more for them to do. In the *Martin-Baker* case, the contract required some action by the defendant to earn each subsequent item of commission.

A similar type of contract to that in the *British Bank* case occurred in *Williamson* v. *Steriphone Co., Ltd.* [1952] C.L.Y. 16, decided in the Mayor's and City of London Court. The plaintiff had been employed by the defendants under an oral contract which included a term that he was to receive a commission on the amounts payable each subsequent year under contracts he obtained. It was held that the defendants could not, by dismissing the plaintiff, deprive him of his right to receive the future commissions he had earned by obtaining contracts.

Master and Servant

It remains to be considered whether there is any difference in principle between cases of principal and agent and those involving master and servant. In his dissenting judgment in *Sellers* v. *London County Newspapers, Ltd.*, *supra*, Sir Raymond Evershed, M.R., thought that there might be such a distinction. He said (at p. 548): "[The servant's] position is, I think, essentially different from that of an independent contractor like a broker or house agent who is engaged by a principal on commission terms to transact some single piece of business or a specified and limited number of pieces of business. In the latter class of case, if the agent is promised a commission provided that he produces for his principal, e.g., a person ready and willing to buy his house, then, if he does the work for which commission was promised, he becomes entitled to that commission although his principal afterwards purports to put an end to the agency. The case of an employee seems to me, however, fundamentally different. In such a case, *prima facie*, I should have thought, the remuneration which the employer promises to pay as consideration for the services to be rendered is payable only during such time as the services are rendered in fact." Later (at p. 551) his lordship said: "In my judgment, therefore, the authorities support, and are consistent only with, the view which I have already indicated, namely, that, in the case of a contract of service between master and servant, all right on the servant's part to remuneration by commission or otherwise will cease with the termination of his service unless by the terms of his contract provision to the contrary is clearly made."

In *Sellers'* case, the majority, Singleton and Birkett, L.JJ., were able to decide the case on the wording of the particular contract. There was an oral agreement to obtain orders for advertising space in newspapers, the plaintiff being paid a salary and commission on orders obtained. Commission was not payable on orders until the advertisements were published. It was held that, in the absence of an express term that the right to commission should end with the termination of the employment, the plaintiff was entitled to commission on any orders he obtained while employed by the defendants, even though the advertisements to which the

orders related were not published until after the termination of the employment.

The difference between the members of the court on the construction point was mainly one of emphasis. The majority could find nothing in the contract to prevent the plaintiff from succeeding: the Master of the Rolls thought the contract did not make the plaintiff's right to succeed sufficiently clear. It is thought that as a matter of principle the view of the majority was clearly right. It is difficult to see why, once the plaintiff had fully performed his part of the contract, if he were a servant the master could obtain the benefit of his services without remuneration by dismissing him before the actual time for payment arrived, whereas, had the plaintiff been an agent, the purported dismissal would not have had the effect of depriving him of remuneration already earned.

Conclusion

Subject always to the overriding qualification that each case must turn on its own facts, and to recognising that general principles must give way to specific terms in the contract, it is thought that the following general propositions are justified:—

1. There is a rebuttable presumption that no remuneration is payable after termination of an agency, even in respect of transactions with persons originally introduced by the agent.

2. There are two distinct classes of case:—

(*a*) Where his part of the contract is fully performed by a single introduction on the part of the agent.

(*b*) Where the contract remains executory on both sides.

3. In cases falling under class 2 (*a*) above, the agent having wholly executed his mandate cannot be deprived of his commission by a purported termination of his agency by the principal.

4. In cases falling under class 2 (*b*) above, there is a continuing offer by the principal which may be accepted from time to time by the agent until withdrawn by the principal. The principal may normally, but not invariably, withdraw his offer by summary termination of the agency, but where there are onerous restrictions imposed on other activities by the agent reasonable notice may be necessary.

5. There is no distinction in principle between cases of principal and agent and cases of master and servant. In neither case can commission be earned after termination of the contract, but termination of the contract cannot deprive the agent or servant of his right to receive payment of remuneration earned during the currency of the contract.

H. N. B.

MATRIMONIAL CAUSES: REVIEW FOR THE JUDICIAL YEAR 1954-55—II

In an earlier article (*ante*, p. 715) cases relating to the grounds on which decrees of divorce or nullity can be obtained were considered. It is now proposed to deal with cases on maintenance, domicile, costs, procedure and evidence.

Maintenance

In the maintenance cases reported, the courts have had to deal with attempts by husbands to avoid liability where agreements making provision for their wives have been in existence. In *Simmonds* v. *Simmonds* [1955] 3 W.L.R. 129; *ante*, p. 436, a wife, who had obtained a decree absolute in 1940, gave notice of an application for maintenance in 1941, duly served in accordance with the rules. Although preliminary steps had been taken, no appointment was made for the consideration of the application itself by the registrar. In 1948 the parties entered into an agreement whereby the husband purported to pay the wife the sum of £250 in satisfaction, *inter alia*, "of any claim which the wife might have against the husband by way of permanent maintenance," and the wife consented to the order being made in such form as the husband might require for the purpose of effectually discharging him from such claims. In 1954 the husband issued a summons calling on the wife to show cause why her application made in 1941 should not be dismissed pursuant to the deed. It was held that the deed did not oust the court's jurisdiction under the Matrimonial Causes Act, 1950, s. 19, to hear her application. If this was dismissed now without her consent, the effect would be to order the payment to her of a lump sum against her will, which the court had no jurisdiction to order. In view of the former, though erroneous practice of the court, whereby a timely application for maintenance was treated as preserving for the future the right to proceed with the claim, the wife's application of 1941 would not now be dismissed, though the delay would be taken into account when the application was considered by the registrar on its merits.

A further attempt to avoid liability was made in *National Assistance Board* v. *Parkes* [1955] 3 W.L.R. 347; *ante*, p. 540, where a covenant by a wife was contained in a separation agreement that she "will not at any future time be or claim to be entitled to any financial provision whatsoever from the husband in respect of herself and child or either of them." The wife later fell on bad times and received national assistance from the National Assistance Board, who made a complaint against the husband that he should contribute towards the weekly amount they were paying under s. 43 of the National Assistance Act, 1948. The Court of Appeal held that the covenant by the wife not to ask for maintenance did not oust the duty of the husband to maintain her, and, therefore, the Board were entitled to a contribution from him. The exemption of a husband from liability to contribute towards the maintenance of his wife on the commission by her of a matrimonial offence—reaffirmed in *National Assistance Board* v. *Wilkinson* [1952] 2 Q.B. 648—was thus not extended to a covenant by her to make no claim for maintenance.

Another unsuccessful attempt to avoid liability was made not by setting up the existence of an agreement, but by relying on external circumstances. In *Bevan* v. *Bevan* [1955] 2 W.L.R. 948; *ante*, p. 306, a wife claimed instalments due under a separation agreement made in 1932 under which the husband agreed to pay a monthly sum to the wife so long as they remained separated. The wife, who was Viennese by birth, resided in Austria during the war. The husband did not pay any of the monthly instalments to the Custodian of Enemy Property, and had failed to make any payment since then on the ground that the separation agreement was abrogated by the advent of war as being contrary to public policy in that it might assist the enemy, and as having been frustrated. The court held that public policy did not require that the agreement should terminate on the outbreak of war and, therefore, that performance

was not abrogated. The suggestion that the separation agreement had been frustrated owing to impossibility of performance could hardly be supported as the separation was not only possible, but inevitable during the war, while the payments could be made to the Custodian of Enemy Property. As the husband had not done this, the wife was entitled to recover.

Points arising on discharge of orders for maintenance have received the attention of the courts. In *Pilcher* v. *Pilcher* [1955] 3 W.L.R. 231; *ante*, p. 473, it was held that where an order is registered in a court of summary jurisdiction under the Maintenance Orders (Facilities for Enforcement) Act, 1920, s. 1 (1), i.e., an order made by a court in one of Her Majesty's dominions outside the United Kingdom, the power of the court of summary jurisdiction is limited to enforcement and does not permit of complaints for alteration, variation or discharge of orders so registered. In *Trathan* v. *Trathan* [1955] 1 W.L.R. 805; *ante*, p. 492, on a wife's complaint for an increase of maintenance under an existing order, the husband gave evidence that the wife had deserted him since the making of the order and asked that it should be discharged. The justices found against the husband and increased the maintenance. The Divisional Court held that, in the absence of a complaint by the husband, the justices had no jurisdiction to discharge the order and should not have considered it, but were entitled to consider the conduct of the parties in varying the amount.

Death does not discharge an order for maintenance where its terms are ascertainable, but have not been carried out. In *Mosey* v. *Mosey and Barker* [1955] 2 W.L.R. 1118; *ante*, p. 371, it was held that a wife had an enforceable claim under the Law Reform (Miscellaneous Provisions) Act, 1934, s. 1 (1), against the executor of her divorced husband's estate. The latter was obliged to comply with the terms of the registrar's order made before the husband's death, charging real property with certain sums, and to execute the necessary deeds.

The correct form of order to carry out the intention of the court was considered by the Court of Appeal in *J.-P.C.* v. *J.-A.F.* [1955] 3 W.L.R. 72; *ante*, p. 399. In order to secure a wife as interim maintenance the net sum of £5 10s. per week the correct form of order should not be "£5 10s. per week free of tax," but should be "£7 per week less tax." Under this order the husband would be required to deduct tax at the standard rate and his wife would then be able to claim rebate.

Closely allied to the innocent wife's right to maintenance is the husband's general duty to provide a home for his wife. There has been a conflict of *dicta* whether the deserted wife's right to stay in the marital home is a personal one which avails only against the husband or is an equity which is good against purchasers with knowledge of her right. In *Westminster Bank, Ltd.* v. *Lee and Another* [1955] 3 W.L.R. 376; *ante*, p. 562, the latter view was adopted. It was held that the right of a deserted wife to remain in the matrimonial home is a mere equity and no equitable estate or interest in that home was created in her favour on desertion. The bank, as equitable mortgagee, could, like the owner of the legal estate, plead in defence that it had no notice of any fact which would put it on inquiry and that it took as purchaser for value without notice and therefore its mortgage took priority over the wife's rights. It was thus entitled to an order for the usual accounts and inquiries in a foreclosure action. If the bank obtained thereafter an order for sale, it would be entitled to an order for possession within three months after the master's certificate. Thus, the wife's right may prevail against a purchaser with notice (see also *ante*, pp. 690, 719). If it does, however, it is not a permanent right, but entitles her to remain in possession only until the court in its discretion orders her to leave (*Jess B. Woodcock & Sons, Ltd.* v. *Hobbs* [1955] 1 W.L.R. 152; *ante*, p. 129).

Provision of a roof for an innocent wife was a factor to be considered in proceedings under s. 17 of the Married Women's Property Act, 1882. In *Cobb* v. *Cobb* [1955] 1 W.L.R. 731; *ante*, p. 453, the Court of Appeal reversed the decision of the county court judge that a house intended to be owned in equal shares should be sold with vacant possession, subject to the wife's charge of £300 on the proceeds of sale. The court applied *Rimmer* v. *Rimmer* [1953] 1 Q.B. 63 in holding that both parties were entitled to the proceeds of sale in equal shares, both being equally liable for the balance of the mortgage repayments. No order for sale of the house with vacant possession was made at the present time as the wife was a co-owner and might be an innocent party in any subsequent proceedings, the husband then being liable to provide her with a roof. This question would be considered at the time of dealing with maintenance or alimony.

Where proper provision has been made for a wife and children under an ante-nuptial settlement, the court will not entertain an application to vary it under s. 25 of the Matrimonial Causes Act, 1950. In *Best* v. *Best* [1955] 3 W.L.R. 334; *ante*, p. 543, the court refused the application of a wife, who had obtained a divorce, to vary an ante-nuptial settlement by making increased provision for herself and the child of the marriage and putting an adopted child in the same position as the child of the marriage.

Domicile

It is a fundamental principle of English law that the only court competent to dissolve a marriage is that of the domicile. Inroads have been made on this principle by s. 18 of the Matrimonial Causes Act, 1950, which confers additional rights on a wife whose husband is domiciled abroad. Further, a foreign decree of divorce will not be recognised by the English courts unless the jurisdiction of the foreign court was either based on domicile or on some exception to that principle which coincided substantially with the statutory exceptions in English law. It was on this reasoning that the English court recognised the decree granted by the High Court of Northern Ireland in *Carr* v. *Carr* [1955] 1 W.L.R. 422; *ante*, p. 260. These issues were again raised in *Dunne* v. *Saban* [1954] 3 W.L.R. 980; 98 Sol. J. 888. In that case a wife resident in Florida, whose husband was then resident and domiciled in England, obtained a divorce in a court in that State. The jurisdiction of that court was said to be based on residence of ninety days and domicile, the wife being able under American law to acquire a separate domicile from her husband. On a petition by the husband for a declaration that the marriage had been validly dissolved, it was held that since the divorce jurisdiction of the English court depended on the domicile of the parties, the court would not recognise a divorce decree of a foreign court made in the exercise of jurisdiction which encroached on that test, unless the English court itself possessed a statutory jurisdiction which encroached to an equal extent. Accordingly, the decree of the court in Florida would not be recognised, because English law did not accept that a wife could have a domicile separate from her husband or that ninety days' residence by her was sufficient to found a jurisdiction dependent on her residence, and therefore the petition was dismissed.

The jurisdiction of the English court was enlarged, not restricted, by s. 18 of the Matrimonial Causes Act, 1950, which is expressed to be "without prejudice to any jurisdiction exercisable by the court apart from the section." This

principle preserves to the court its inherent jurisdiction inherited from the ecclesiastical courts to entertain proceedings for nullity in the case of a voidable marriage where the parties are resident, but not domiciled, in England. It was for this reason that the court held in *Ramsey-Fairfax (otherwise Scott-Gibson)* v. *Ramsey-Fairfax* [1955] 3 W.L.R. 188 ; *ante*, p. 474, that it had jurisdiction to hear the wife's petition for nullity on the grounds of incapacity and wilful refusal as both parties were resident in England.

Custody

Custody and maintenance of children are governed by s. 26 of the Matrimonial Causes Act, 1950, subs. (1) of which relates to " the children the marriage of whose parents is the subject of the proceedings." In *Bryant* v. *Bryant* [1955] 2 W.L.R. 922 ; *ante*, p. 290, the Court of Appeal held that this wording covered the children of a bigamous marriage.

The reversal by the Court of Appeal of a decision of the trial judge in the exercise of his jurisdiction regarding the religious upbringing of the child of a marriage which had been dissolved was held to be a final decision, from which there could be no appeal as a question of law to the House of Lords under s. 27 (2) of the Supreme Court of Judicature (Consolidation) Act, 1925 (*B.* v. *B.* (*No.* 3) [1955] 1 W.L.R. 559 ; *ante*, p. 335).

Costs

Questions of costs have arisen in three cases. In one of two cases under the Legal Aid and Advice Act, 1949, Sched. III, it was held, where a wife's petition under the Act had been dismissed, that the fact that she was disbelieved as a witness did not necessarily mean that she should be allowed no costs for attending court (*Bock* v. *Bock* [1955] 1 W.L.R. 843 ; *ante*, p. 492). In another case a registrar was held not justified in reducing counsel's brief fee from seven to five guineas on grounds that he was engaged in two cases on the same day in the same court (*Isaac* v. *Isaac* [1955] 3 W.L.R. 253 ; *ante*, p. 493).

In *Mearns* v. *Mearns* [1955] 1 W.L.R. 303 ; *ante*, p. 204, it was held that a party cited, with whom a wife's adultery had been admitted, should not be obliged to pay costs relating to issues of cruelty with which he was in no way concerned.

Procedure

Two cases arose as to the powers of the courts to intervene subsequent to the grant of decree where matters, hitherto undisclosed and relevant to the marriage, came to light. In the rather unusual case of *Thynne (Marchioness of Bath)* v. *Thynne (Marquess of Bath)* [1955] 3 W.L.R. 465 ; *ante*, p. 580, after a decree *nisi* had been made absolute, a ceremony of marriage between the parties, earlier than that purported to have been dissolved by the decree, was revealed, and the petitioner sought leave to amend the petition and decrees *nisi* and absolute by substituting this one for the later one. The Court of Appeal held by a majority that if a decree of divorce is granted after trial by a competent court in accordance with the Matrimonial Causes Act, 1950, the status of marriage between the parties is brought to an end, and if the decree gives the wrong date or place of the effective marriage ceremony, the decree is not thereby rendered void. The court had power in its inherent jurisdiction to amend an order of the court after it had been drawn up, so as to make the position under it clear and free from ambiguity. In the present case the amendment would take the form of striking out the date and place of marriage as stated in the decrees, as this would effect the intention of the court granting the decrees, viz., to dissolve the marriage subsisting between the parties, and would not create a semblance that the commissioner had considered the earlier marriage.

The other case of non-disclosure (*Wells-King* v. *Wells-King* [1955] 1 W.L.R. 309 (Div. Ct.)) ; *ante*, p. 222, related to adultery by a wife after she had obtained a decree *nisi* on grounds of her husband's cruelty (sexual). Before the decree was made absolute, the husband filed notices of motion for a rehearing, one in the Court of Appeal (which was asked to rescind the decree) and this in the Divisional Court under r. 36 (1) of the Matrimonial Causes Rules, 1950. The motion in the Court of Appeal had been adjourned. The Divisional Court refused to deal with the matter of the undisclosed adultery and held that it was indivisible from the issue of cruelty ; it was for the Court of Appeal to hear additional evidence or to order a rehearing in which the issues could be tried together.

Evidence

Where a vicar of a parish of his own initiative approached one of the parties to a marriage with a view to avoiding its eventual break-up, and was accepted as a conciliator, privilege attached to his evidence, just as if the initiative had come from one of the parties themselves (*Henley* v. *Henley (Bligh cited)* [1955] 2 W.L.R. 851 ; *ante*, p. 260).

Many of the cases reviewed in this and the earlier article pose the question whether the present matrimonial law in England is in all respects satisfactory. It is to be hoped that the forthcoming report of the Royal Commission on Marriage and Divorce will point the way to useful reforms.

R. M. H.

FORTY YEARS ON

OLD diaries can be fascinating literature, and the addition of a legal spice can give one almost melancholy post-prandial reflections. By chance, the Lawyer's Diary for 1914 has emerged from our cellars ; how different the times were and yet how similar were the problems that faced the solicitors of those days.

The most marked contrast with current diaries is in the printed parts, particularly in the law lists at the end. There were a tremendous variety of appointments held by solicitors —my grandfather's entry is typical—" 1882, p. com., Com. Oaths, reg. & High Bailiff co. ct., clk. to L. and D. urb. dist. Councils, D.jt.Hosp.bd., & L.United Charities." Many of the solicitors were perpetual Commissioners, and from the number and variety of entries recorded it seems that almost all clerical jobs must have been in their hands. Now, the appointments held by my grandfather are held by six others. I rather like the entry of one Irish solicitor " —practitioner in all superior and local courts, Solicitor to the Board of Trade (Companies dept.) ; the Official Receiver in Bankruptcy ; the Public Trustee ; the Iron Trades Assn. ; the Employers' Fedn. ; to Lloyd's and all the large insurance Companies. Special Commissioner appointed to take evidence in Ireland for the High Court of Justice, Canada." He finishes by having two of the largest London firms as his London agents.

There appear on the whole to have been about one-third fewer solicitors then than now. Despite the large numbers who sit for the final examination nowadays, the profession does not seem to be growing exceptionally fast, for in 1833 about 8,400 attorney's certificates were issued, compared with the present 17,000 odd. We should think ourselves select compared with the 67,000 doctors. Notaries public, on the other hand, seem to have decreased in numbers ; in

London in 1914 there were thirteen firms having a total of twenty-eight notaries, while to-day there are only five with fifteen respectively.

In many of the entries, both in London and more particularly in the provinces, one can trace the history of the firms one still deals with. Messrs. *X Y* and *Z* really did have a Mr. *X*, a Mr. *Y* and a Mr. *Z* at one time, and by their descriptions what distinguished men they must have been.

Another respect in which this diary differs so radically from its present counterpart is in the amount of general information given in it. On the legal side there is included an index of Public General Statutes and a list and digest of the Acts passed in 1912 and 1913, there being nineteen and thirty-eight respectively. Of more general interest are the lists of clerks of local authorities, alphabetical and constituency lists of members of Parliament, Prime Ministers since 1800 and rulers of chief countries of the world, a list which contains fourteen kings, eighteen emperors, grand dukes, etc., and only six presidents. From the countries listed there are now thirteen presidents and only ten hereditary rulers. The foreign exchange rates table also makes strange reading these days. Altogether there are 971 pages of information given, but I could find no reference to the then current price of the work; doubtless the order form for the following year's diary had been torn out and used.

The entries made in the diary are surprising almost in their modern atmosphere, or perhaps we have progressed little since those days except in volume of work disposed of. Yet the work taken on appears to have been more varied. "Jan. 15 Attdg. T. on his bringing in working model of patent & takg. instruns. to obtain capital of about £1,000 to float a company to put machine on the market." Subsequent entries show that the machine was taken to London to be shown to another firm of solicitors; there are numerous entries "T. re Patent: attdg. T. thron." which suggest that *T's* enthusiasm did not over-impress his legal adviser. The London solicitors asked for the specification, which apparently they never received, and eventually *T* asked for his machine back as he wished to show it to a friend. I wonder if we should be any more keen to tackle a patent case to-day.

"Jan. 8. On receipt of cheque for £7.18.– ¼'s rent less 17/– tax wg. R. ackng. & to forward us rect. for tax paid by him." Tax was then 9d. for earned and 1s. 2d. for unearned income and super tax 6d. on incomes over £5,000. "April 10th. Attdg. P. re I/T. . . . time spent 3 hrs." One wonders what the difficulty was.

"Apr. 2nd. M. re Mrs. M.: Attdg. M. as to continued unhappy relations with Mrs. M. & we were to arrange if possible a deed of separation. He stated he had arranged to let his house at W. & advising him not to leave the house until we had arranged the separation" (was *Bendall* v. *McWhirter* only three years ago?) "so that there could be no possible charge of desertion against him & we were to communicate on the matter with Messrs. V. & Sons" (who are still going strong in the same premises) "who were Mrs. M.'s Solrs. & he stated if separation was arranged he would pay Mrs. M. 12/– a week. Wg. V. & Sons that it seemed desirable that a separation should be arranged between the parties & for them to consult Mrs. M. to see what could be done in the matter." Subsequent entries show that M.'s income was £224 p.a., and they finally parted, he paying her 15s. per week for the first year, 14s. the second, and 10s. for the remainder of their joint lives. This appears to have been the most M. could do as he had a daughter wholly to maintain. In the course of negotiations there was a meeting between the solicitors, and although the businesses are only thirty-two miles apart it was held in an intermediate town.

I was a little surprised to find how many of the clients mentioned are still clients. Some of them, alas, have since become probate work; the emphasis on the work also appears to have shifted since then, conveyancing taking a far larger share. We have lost some of the variety, and all the leisurely pace.

I looked in vain for any reference to the beginning of the war. Entries gradually became less frequent, but I think that was probably because they were made in another diary. Perhaps it was then that our smallest branch office was closed and that in itself was a reflection of the change. My father used to go there daily from our main office on his bicycle, but after the war it was too far away to be worth re-opening.

N. P.

A Conveyancer's Diary

PURCHASER'S REMEDIES WHEN VENDOR FAILS TO COMPLETE—I

A READER has suggested that the rights and remedies of a purchaser when his vendor refuses to complete a sale would form a useful subject for an article in this "Diary." The case is put in this way: The Law Society's Conditions of Sale and the National Conditions both contain elaborate provisions setting out the rights of the parties when the purchaser fails to complete, but there are no similar provisions covering the position when the vendor fails to complete. The reader goes on to say that he has had two cases recently of a vendor who, having contracted to sell a house with vacant possession at completion, has then been unable to find other accommodation and has refused to complete on the contract date. This places the purchaser in a very awkward position and rescission of the contract, although it might suit the vendor, is not what the purchaser wants at all; on the other hand, an action for specific performance would result, from the purchaser's point of view, in quite unacceptable delay.

The plight of the purchaser in circumstances of this kind is well known. The gradual change in the real property market from the abnormal conditions which followed the war is making cases of the kind mentioned somewhat more rare; it is not now quite so easy for the vendor to find a purchaser willing to pay a fair price for residential accommodation as once it was, and on the other hand, if the vendor's ability or desire to complete on the due date is conditional on his finding other accommodation for himself, there is a wider choice of that available on the market. But these cases recur nevertheless, and it reflects little credit on the state of the law or its practice that when they do the purchaser, as things usually stand, has no really effective remedy against his vendor.

I think that my correspondent is largely right when he attributes this state of affairs to the present form of the commonly used printed conditions of sale. I have never understood why these conditions should continue to be so heavily weighted in favour of the vendor. As I understand it, before the day of these conditions, the vendor's solicitors would prepare a draft contract, incorporating conditions

covering all or most of the matters which are now dealt with in the printed conditions. Forms for conditions of this kind are still to be found in the books of precedents, although one does not often come across a complete contract which has been prepared in a solicitor's office on these lines. But when this was the common, indeed the only, practice, the submission of the draft contract by the vendor's solicitors to the purchaser's solicitors afforded an opportunity for the latter not only to check such matters as the parcels or agree a convenient date for completion, but also to amend in favour of their own client any obviously inequitable condition. The time taken to arrive at an agreed draft contract may have been much longer than would be considered tolerable to-day, but the product was probably often a much more satisfactory document if looked at from both parties' points of view.

The printed conditions used to-day are the lineal descendants of the forms upon which a vendor's draft contract used to be prepared, but for some reason or other (the physical difficulty of amending matter so closely printed should perhaps not be disregarded in this connection) it is very rare indeed for the purchaser or his advisers to make an amendment in these conditions. As a consequence, what were in their inception vendor's draft conditions, put forward to be considered at leisure and very probably amended before acceptance, have become model agreements, accepted by both parties as both comprehensive and reasonable, at least until some trouble arises; and then it is too late. The wide use of printed forms of contract which incorporate printed general conditions by estate agents has no doubt helped to familiarise the public with them and to inspire a general feeling of confidence in their quality. One cannot blame the publishers of these forms for continuing to sell an article for which there is a ready demand, and which has by now a long tradition of use behind it. It is the user who is to blame. If purchasers habitually amended in their own favour conditions which give a ready and practicable remedy to the vendor in some particular event but afford no corresponding remedy to the purchaser, vendors would cease to put forward conditions which would be more likely than not to lead to amendment and counter-amendment, and conditions which hold the scales more evenly between the parties would come to be demanded. After all, if it is a solicitor's duty to protect his clients in every way, it is also his expectation that they will perform their legal obligations; and provided these are reasonable, that is to say, practicable, nobody is likely to quibble at a position which will subject the parties to similar penalties in the event of either being in default in his plainly undertaken obligations.

The suggestion which I put forward is that purchasers' solicitors should make it a practice either to delete or to amend those of the printed conditions incorporated in any contract submitted to them for approval which may operate to their client's disadvantage. Conditions absolving the vendor from his common-law obligations in regard to such matters as easements and boundaries may be deleted without creating any inconvenient void; but the condition which particularly requires attention is that to which my correspondent has referred, the condition which gives the vendor a power to resell the property upon the purchaser's default.

Until a few years ago the form of the common condition giving this power used to run somewhat like this: If the purchaser should neglect or fail to complete his purchase in accordance with the provisions of the contract, his deposit should become forfeited to the vendor and the vendor might, without previously tendering a conveyance, resell the property; any loss sustained by the vendor on such a resale, whether by reason of any decrease in the purchase price or of any expenses to which the vendor might be put, became payable by the purchaser to the vendor, after taking into account the deposit, as liquidated damages, but any increase in price should belong to the vendor absolutely. This form was based on the view that one of the conditions of the contract was that the contract should be completed on the day fixed for completion, and that if the purchaser did not on that date complete he was in default and the vendor could forthwith invoke this condition for resale. But this view was erroneous, for time is not of the essence of a contract for the sale of land unless expressly so agreed between the parties. This was pointed out by Harman, J., in his now celebrated judgment in *Smith* v. *Hamilton* [1951] Ch. 174, where he said: "Where there is a provision in the special conditions [the reference in fact was to a common printed condition] which, on the face of it, entitles the vendor to forfeit the deposit and to resell—without notice, be it observed—can that right be exercised on the morrow of the day fixed for completion . . . ? The condition which has to be satisfied is that the purchaser shall neglect or fail to complete his purchase according to these conditions. One of them is that the purchase shall be completed on the day named in the special condition . . . But it is agreed that that date, except in special circumstances, is not an essential part of the contract, and therefore the condition is, I think . . . that the purchase shall be completed on [the date fixed for completion] or within a reasonable time thereafter. Therefore the right to forfeit and resell . . . does not accrue until there has been a default by the purchaser in completing either on the day fixed or within a reasonable time. That right does not in effect arise until a purchaser has deprived himself of the equitable remedy of specific performance by his delay or default, or by a repudiation, express or implied, of the contract."

As a result of this decision the common form condition for resale by the vendor was amended, and it now provides that if the purchaser should not complete his purchase on the date fixed for completion, the vendor may serve upon the purchaser a notice requiring him to complete within (say) twenty-one days; and if this notice is not complied with, the vendor may then resell, etc. The effect of a notice to complete under a condition in this form is that, whether time was of the essence in the first place or not (and usually it is not, in the first place), the notice makes it so, and the vendor's express rights under the condition thereupon become exercisable.

I have mentioned this point and dwelt upon it at some length because when it comes to providing some kind of similar remedy for the purchaser (a matter which I will deal with next week) the rule that time is not normally of the essence of a contract for the sale of land must constantly be borne in mind.

"A B C"

The following appointments are announced in the Colonial Legal Service: Mr. G. K. J. Amachree, Crown Counsel, Federation of Nigeria, to be Senior Crown Counsel, Federation of Nigeria; Mr. M. C. E. P. Biron, Resident Magistrate, Tanganyika, to be Senior Resident Magistrate, Tanganyika, Mr. D. D. Bolt, Administrative Officer, Nyasaland, to be Resident Magistrate, Nyasaland; Mr. H. L. da Costa, Crown Counsel, Jamaica, to be Assistant Attorney-General, Jamaica; Mr. E. J. E. Law, Resident Magistrate, Tanganyika, to be Senior Resident Magistrate, Tanganyika; Mr. C. Wylie, Attorney-General, Barbados, to be Attorney-General, British Guiana, and Mr. T. H. Williams to be Magistrate, Grade I, Federation of Nigeria.

Landlord and Tenant Notebook

STATUTORY TENANT

THE expressions "statutory tenant" and "statutory tenancy," now adopted and defined by the Housing Repairs and Rents Act, 1954, were, as Mr. Megarry's diligent researches have shown, first used by Coleridge, J., in *Hunt* v. *Bliss* (1919), 89 L.J.K.B. 1174. (It does not, I think, follow that other claimants have been plagiarists; they may not have lacked originality, though unable to establish novelty.) The claim in that action was possession against a tenant who had given notice to quit but not acted thereon; the landlord could not prove any consequential loss and even under the Increase of Rent, etc. (War Restrictions) Act, 1915, which included among "grounds for possession" the somewhat vague "some other ground which may be deemed satisfactory by the court," the tenant's position was found to be impregnable. And towards the end of the judgment, delivered on 20th November, 1919, Coleridge, J., describing what happens when a tenant gives notice but holds over, said: ". . . He would be in the position of a statutory tenant. It seems, therefore, that a statutory tenancy arises the instant the notice to quit comes into effect."

And so it may have seemed to the draftsman of the Increase of Rent, etc., Restrictions Act, 1920, who ventured to use the expression "Conditions of Statutory Tenancy" as a marginal heading to s. 15. Such marginal notes are not part of the enactment, as has been "held again and again" (for an instance of judicial recantation on this point, see *Sutton* v. *Sutton* (1882), 22 Ch. D. 511 (C.A.), at p. 515), but the two expressions became current. A fair amount of judicial invective was levelled at them, but it is right to say that adverse criticism has been based on the circumstance that the statutory "tenant" has no estate in land rather than on his having no contract (there have always been tenants without contracts). Perhaps the somewhat grudgingly uttered "though convenient, inaccurate" of Lord Reid in *Baker* v. *Turner* [1950] A.C. 401 fairly characterises the position. Incidentally, I believe that many of those whose indignation has been aroused would never hesitate to use such self-contradictory terms as "bigamous marriage" or "void contract."

The first subsection of the aforementioned s. 15 runs: "A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act, and shall be entitled to give up possession of the dwelling-house only on giving such notice as would have been required by the original contract of tenancy, or, if no notice would have been so required, on giving not less than three months' notice." The third subsection protects the "lawful" sub-tenant on a mesne tenancy determining. The Housing Repairs and Rents Act, 1954, s. 49 (1), says: "In this Part of this Act . . . 'statutory tenant' means a tenant (as defined in paragraph (*g*) of subsection (1) of section twelve of the Act of 1920) who retains possession by virtue of the Rent Acts and not as being entitled to a tenancy, and 'statutory tenancy' shall be construed accordingly." "This Part" is Pt. II; and, for the sake of completeness, I add that the same subsection defined "Act of 1920" as "the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920," and "the Rent Acts" as "the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939."

Discussing the usefulness of this new definition, it will first of all be observed that the language used limits its scope to Pt. II of the Housing Repairs and Rents Act, 1954. That Part contains the provisions for the repairs increase and increased cost of services increase of rent; and presumably it was considered advisable to supply the definition because, as was pointed out in last week's "Notebook," this legislation provides, for the first time, for increases to be made in rent whether payable by a tenant holding under a contract or by virtue of the statutory protection. It may also have been considered advisable to distinguish this "statutory tenancy" from the variety brought into being by the Landlord and Tenant Act, 1954, Pt. I, which freely uses the expression "statutory tenancy" to describe the relationship between parties to a "long tenancy at a low rent" which has expired and been replaced by one either agreed by the parties or determined by a court of law.

But, by invoking the definition of "tenant" in the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (1) (*g*), the definition approves the use of the expression "statutory tenancy" as covering the so-called "tenancy transmitted by death." It is, perhaps, a trifle pedantic to object to this phraseology; Mr. Megarry agrees that it is "somewhat misleading," *Tickner* v. *Clifton* [1929] 1 K.B. 207 having shown that the successor need not feel concerned about any rent left owing by the deceased, but rightly pleads that it is convenient and has long been in use, considerations which no doubt appealed to the Legislature when inserting the parenthetic reference to the definition. It may just mean slightly straining the ordinary meaning of the word "retains."

It took a good deal of litigation to settle the main characteristics of such a "statutory tenancy"; without citing authorities, one may recall how it was established that the statutory tenant has no estate, and consequently nothing that he can assign; but, nevertheless, that he can sue his landlord and anyone else for trespass. But it seems doubtful whether Rent Act territory will ever be completely explored, and one matter about which we can still experience doubt is that of the effect of a purported sub-letting of part of the dwelling-house. In *Roe* v. *Russell* [1928] 2 K.B. 117 (C.A.), which demonstrated the unassignability of the statutory tenancy, Scrutton, L.J., definitely expressed the view that its holder might sub-let part; the learned lord justice "reserved" the question of the effect of piecemeal sub-letting of the whole; as far as a landlord's right to possession is concerned, this is made a ground for possession (Rent, etc., Restrictions (Amendment) Act, 1933, Sched. I (*d*)), but only if not consented to—and then the question of reasonableness might be raised. In *Lewis* v. *Reeves* [1952] 1 K.B. 19 (C.A.) the court decided that the widow of a statutory tenant, "succeeding" to the tenancy by virtue of the above-mentioned s. 12 (1) (*g*) of the Act of 1920, might sub-let part *and* that on her death the sub-tenant was entitled to "a" s. 15 (3) tenancy. Then, in *Solomon* v. *Orwell* [1954] 1 W.L.R. 629; 98 SOL. J. 248 (C.A.), we find it laid down that the grant of such a "sub-tenancy" confers no estate or interest on its grantee (which one might expect) *and* that on abandonment of the premises by the grantor the grantee had no protection against the grantor's landlord. Which invites the reflection that perhaps there is a difference between a statutory tenancy created by holding over and one "transmitted by death."

R. B.

HERE AND THERE

CHANGING BEAUTY

WHEN Richard Roe was a small boy, he heard it said of a middle-aged lady of his acquaintance that in the past (as distinct from the present) she had had such a lovely smooth complexion, whereupon someone else remarked that it's just those complexions that go off quickest. And immediately he made a mental note that when the time came for courting he must remember to keep off girls with lovely smooth complexions. Similarly, having been often beset in childhood by majestically ample ladies, he made a firm resolution that never in later life would he allow himself to be engulfed, full fathom five, in any such capacious bosom. His ideal of feminine perfection was (and is) the *via media*, the golden mean, not too little, not too much (as the advertisement says), medium stature and a form solid but shapely. But even at that early age an enforced study of the poets in their more melancholy moods had made him distressingly conscious that "*le temps aux plus belles choses aime à faire affront*," and he was sadly aware that, however carefully he chose, a day might come when the solidity remained but the shapeliness had vanished. This, he always felt, would be terribly hard—payment deferred for past delights in terms of present æsthetic suffering—for, of course, he told himself, if he liked a Rubens figure he'd marry a Rubens figure to start with. But it never occurred to him then (let alone after he began to study the law) that acquired obesity might be a matrimonial offence giving ground to a suit for divorce. Now, however, the case of *Korzen* v. *Korzen* in Chicago suggests that he was wrong, at any rate so far as the law there is concerned.

MANDATORY INJUNCTION

MRS. LILLIAN KORZEN, at forty-four and with eighteen years of married life behind her, was, let us say, a good deal more bonnily buxom than she had been at its start, but Michael, her husband, was emphatically not of the opinion that one can't have too much of a good thing, and last May their marriage came before the divorce court. There, apparently, he succeeded in convincing Judge Charles Dougherty that it was a matrimonial offence to put on weight, since Lillian had been guilty of negligence in recklessly indulging what she called her healthy appetite. Accordingly, the court ruled that 13 stone 8 lb. was too heavy and the case was adjourned for four months with something as near as makes no difference to a mandatory injunction to the lady to bring her weight down to 9 stone 1 lb. So all through the summer, even when her doctor would have cried, "Hold, enough!" poor Lillian fought down her avoirdupois. It was an odd sort of caricature of the "Merchant of Venice" situation, with the other party to the suit demanding the shedding of pounds and pounds of flesh, and as she drew near 27th September and the scales of justice literally awaiting her, she had a great fear that when the day came and she was weighed in the balance she would not (alas) be found wanting, for she was only down to a comfortable 10 stone 5 lb. Still, she hoped a little. "I'm sure when he sees me Mike will realise how much weight I've already lost to keep his love. He knows how much I like to eat and how hard I've tried to stay slim." But when the case came on, the husband stood by the letter of the order, but the judge in mercy gave Lillian another twenty-three days to melt those final 18 lb. of too, too solid flesh. That brought the deadline to the 20th October. But by then an interesting development had occurred. Lillian had not changed her weight any more, but she had changed her mind. "After losing all that weight I'm a new person now," she remarked, "and I'm living a life I never knew. Maybe I could win him back now if I want him, but do I?" So, herself weighing it all up, she decided not to be reconciled and the court has further adjourned the case for the subsequent investigation of more conventional charges and counter-charges between the parties.

NATURE'S DEVICES

"FASHIONS of beauty have a way of altering from day to day," and somehow or other women seem to find means of conforming either to the exuberant opulence of Rubens or the sophisticated slenderness of Cranach, and in the past men have been more inclined to complain that women fraudulently disguised their true structure and texture than to resent (like Mr. Korzen) a frank surrender to the course of nature. Oddly enough, the *British Medical Journal*, publishing an analysis by two Birmingham doctors of the weights of 5,000 women, has just thrown a most interesting light on the course of nature. They found that between their early twenties and their late forties married women increase their weight by more than 16 lb., while single women put on less than 6 lb. After forty, married women continue to put on weight at a steady rate of 3 lb. in five years; spinsters tend to lose weight. So nature itself is in the conspiracy to adorn the matrimonial shop window with a very deceptive line in figures. Apropos of that deceptiveness (in which women usually join so enthusiastically), there is a historical mystery to be cleared up by anyone with a taste for that sort of research. The Encyclopædia Britannica, quoting Piesse's Art of Perfumery (1879), refers to a Bill supposed to have been introduced into Parliament in 1770 to subject any women who seduced into matrimony any of His Majesty's subjects "by means of scents, paints, cosmetics, artificial teeth, false hair, bolstered hips, high-heeled shoes or iron stays" to the penalties of witchcraft and to nullify any such marriage. More than this, the late Reginald Hine, in his "Confessions of an Uncommon Attorney," claimed to have found a draft of it among the stored-up records of Messrs. Hawkins & Co., at Hitchin. In 1945, however, he told me that these were "somewhere in the vaults of the muniment room at Hertford." But here comes a curious cross-track. From an independent source, I came across an alleged decree of the *Parlement* of Paris in 1770, in almost precisely the same terms: "*Quiconque attirera dans les liens du mariage aucun sujet male de Sa Majesté au moyen de rouge ou de blanc, de parfums, d'essences, de dents artificielles, de faux cheveux, de coton, de corsets de fer, de cerceaux aux jupes, de souliers à hauts talons ou de fausses hinches sera poursuivie pour sorcellerie et le mariage sera déclaré nul et non avenu.*" Is it a coincidence, or a joke, or what?

RICHARD ROE.

The UNITED LAW DEBATING SOCIETY announces the following debates to be held in Gray's Inn Common Room at 7.15 p.m.: Monday, 7th November, "That the Lord's Day Observance Society does the Church more harm than good"; Monday, 14th November, "That modern town planning has rendered perpetually binding restrictive covenants redundant"; Monday, 21st November, "That poets are parasites"; Monday, 28th November, "That an increased ratio of civil servants to the total population is a sign of decadence"; Monday, 5th December, "That this House would deplore a re-united Germany."

The annual Dinner of the Society will be held on Monday, 12th December, in the Hall of Lincoln's Inn, with Lord Justice Denning in the Chair. It will be the first annual dinner of the Society since its incorporation of the Law Students' Debating Society.

BOOKS RECEIVED

Pageantry of the Law. By JAMES DERRIMAN, of Lincoln's Inn, Barrister-at-Law. 1955. pp. (with Index) 224. London: Eyre & Spottiswoode. £1 5s. net.

From Gun to Gavel. The Courtroom Recollections of James Mathers of Oklahoma. By MARSHALL HOUTS. 1955. pp. 230. London: Souvenir Press, Ltd. 15s. net.

Thirty Who Were Tried or Eternal Vigilance. By LESLIE HALE, M.P. 1955. pp. 304. London: Victor Gollancz, Ltd. 18s. net.

Register of Defunct and Other Companies. Editor-in-Chief: Sir HEWITT SKINNER, Bt. pp. iv and 511. 1955. London: Thomas Skinner & Co. (Publishers), Ltd. £1 10s. net.

The Company Director. His Functions, Powers and Duties. Second Edition. By ALFRED READ, C.B.E., F.C.I.S., F.Inst.D., with a foreword by the Rt. Hon. VISCOUNT CHANDOS, P.C., D.S.O., M.C. 1955. pp. xvi and (with Index) 246. London: Jordan & Sons, Ltd. £1 10s. net.

Archbold's Criminal Pleading, Evidence and Practice. Thirty-third Edition, Sixth Cumulative Supplement. Edited by T. R. FITZWALTER BUTLER, Barrister-at-Law, and MARSTON GARSIA, Barrister-at-Law. 1955. London: Sweet & Maxwell, Ltd.

Archbold's Criminal Pleading, Evidence and Practice. Thirty-third Edition, Supplemental Service Issue No. 6, Noter-up. 1955. London: Sweet & Maxwell, Ltd. Annual subscription 7s. 6d., post free.

The Stock Exchange Official Year-Book, 1955. Volume II. Editor-in-Chief: Sir HEWITT SKINNER, Bt. pp. cccvii and 3,563. 1955. London: Thomas Skinner & Co. (Publishers), Ltd. £7 net (2 vols.).

The Elements of Estate Duty. Supplement, by C. N. BEATTIE, LL.B., of Lincoln's Inn, Barrister-at-Law. 1955. London: Butterworth & Co. (Publishers), Ltd. 3s. 6d. net.

The Law. The Teach Yourself Books. By J. LEIGH MELLOR, LL.B., of the Inner Temple, Barrister-at-Law. pp. xv and (with Index) 234. 1955. London: English Universities Press, Ltd. 6s. net.

This Is Industrial Partnership. By HALFORD REDDISH, F.C.A., Chairman and Managing Director of The Rugby Portland Cement Co., Ltd. pp. 34. 1955. London: Staples Press, Ltd. 2s. net.

A Manual of the Law of Real Property. By R. E. MEGARRY, M.A., LL.B., of Lincoln's Inn, Barrister-at-Law. Second Edition. pp. xlix and (with Index) 646. 1955. London: Stevens & Sons, Ltd. £1 17s. 6d. net.

The Student's Guide to Company Law. By FRANK H. JONES, F.A.C.C.A., A.C.I.S., in collaboration with RONALD DAVIES, M.A., Barrister-at-Law, and DENIS HAYES, LL.B., Solicitor. pp. xxiii and (with Index) 394. 1955. London: Jordan and Sons, Ltd. 19s. 6d. net.

A Current Digest of the Law Affecting Accountancy. Fifth Issue. General Editor: F. SEWELL BRAY, Stamp-Martin Professor of Accounting; Digest Editor: T. W. SOUTH. pp. 71. 1954. London: The Incorporated Accountants' Research Committee. 5s. net.

Chitty on Contracts. Volume 1—General Principles: Volume 2—Specific Contracts (Supplements to the Twenty-first Edition). By BARRY CHEDLOW, of the Middle Temple, Barrister-at-Law. 1955. London: Sweet & Maxwell, Ltd. 4s. 6d. net each.

Clerk and Lindsell on Torts. Eleventh Edition, Supplement. By F. MAURICE DRAKE, M.A., of Lincoln's Inn, Barrister-at-Law. 1955. London: Sweet & Maxwell, Ltd. 4s. 6d. net.

The Conversion of Old Buildings into New Homes for Occupation and Investment. By C. BERNARD BROWN, L.R.I.B.A. pp. xiv and (with Index) 218. 1955. London: B. T. Batsford, Ltd. £2 5s. net.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Conveyancing Costs

Sir,—I am indebted to your correspondents whose views on conveyancing costs were published in recent issues. I take the opportunity, however, of correcting the misinterpretation of my letter which some of them seem to have made.

I think I made it clear in my original letter that I was not describing any existing practice. I was describing the position which would arise if there could be a practice involving only the sale and purchase of suburban houses. I submit that my figures on that point are absolutely accurate and in fact as you will have noticed I calculated my rent and salaries on quite a generous scale. I am quite aware that the expenses of a solicitor's practice do in fact amount to far, far more than 25 per cent. of his gross takings. I am also quite aware that solicitors do not earn £7,500 a year or anything like it. The extent to which the outgoings of a fully employed solicitor are higher, or the net earnings lower than I have quoted is a measure of the extent to which conveyancing subsidises every other form of activity in the solicitor's office. It is this element in conveyancing costs which I attack, not because I do not like it myself, but because my clients do not like it, and in the long run if our clients do not like us they will find some way of dispensing with us.

Some of your correspondents say that I am over-estimating the price of a typical suburban house as between £2,000 and £3,000. They say that the average price is in fact under £2,000. As a house-hunter myself, I very much wish I could find evidence to support that belief. Unfortunately I cannot. I maintain that the average suburban house sells for well over £2,000 and has done ever since the war.

Various correspondents bring up the subject of Land Registry scales. I am glad they have done so. I had rather hoped they would. In order to meet them I suggest that we recalculate our original income on the basis that not half but the whole of the conveyancing is of registered land. You will see that the income of my hypothetical solicitor is reduced to the mere pittance of £3,000 per annum. But remember that he will not now have to prepare any abstracts, draw any conveyances, investigate any titles or examine any deeds. In fact the whole thing is reduced to little more than a spare time occupation. Alternatively, by virtue of the work thus saved, our solicitor (who you will remember has two assistants) can complete three transfers every two days instead of two conveyances in the same period and thus bring his income up to the original £7,500, but with this difference: as he is now charging his clients only £30 a time instead of £45 he has taken the first step towards a more satisfied clientele. But how much better again if the work involved and correspondingly the costs rendered could be reduced in each case by about one-half, as I am sure they could be with a little streamlining of the registration system. The solicitor could then double his output without any further effort and retain the same income, and we should be very near the point at which it would not be worth the client's while to do the job himself, or let his house agent, accountant or bank manager prepare the transfer for him.

Mr. Mellalieu brings up the question of responsibility. It is true that there is responsibility attached to all professional work, but is it really so very much higher in conveyancing than it is in litigation or probate work? A year or two ago the Secretary of The Law Society, a gentleman whose zeal in the interests of solicitors is acknowledged by all, had occasion to reply in the national Press to one of the periodic criticisms of the huge advance in conveyancing costs brought by the inflated value of property. The best, and in fact the only, point he found to raise in defence was that with higher house values the solicitor's liability for negligence was correspondingly increased. As a means of placating the public this left rather much to be desired and lends support to Mr. Wickenden's plea for an improved public relations service. But is it not rather significant that our worthy secretary, who knows more about the subject than any of us, cannot find a better case to put up?

Mr. Pinhorn says that the facts I quote would be welcomed by the national Press. I do not think the national Press need me to give them figures. The client is quite capable of working out that a scale cost of £45 represents a lot of money and without

any help from us or from the Press he wonders how long it would take whatever business he is engaged in to earn that much and wonders whether it really takes as long as this for the solicitor to buy a house for him.

On the question of the value of the estate agent's work, I must add a little more. The relevant point is not whether the agent does or does not do enough work to justify his scale. The point is whether our clients believe he does. Mr. Mursell was able without the aid of an agent to sell his house for a greater sum than an agent could have obtained. I congratulate him, but would suggest that his experience is not typical. I see quite a number of people who start with the confidence that they can find a purchaser on their own but ultimately have to admit defeat. In any case, even if the public did think that the agents were overcharging, this would not make them love us any more.

I hope, too, that I have made it clear that the last thing I want to do is to kill a goose which is laying such golden eggs. My own practice, like most others, would find the going extremely sticky if conveyancing was not available. It is just for this reason that I am very anxious not to be put in the position in which it is not available. I suggest that those who do not agree with me should occupy a pleasant half hour one day going through their figures for their last year of business. Let them deduct from the profits the gross amount of all conveyancing costs rendered during the year and add back the following: firstly, the salaries of their conveyancing staff, or a proportionate part of the salaries of those who engage partly in conveyancing, secondly, the expense of accommodating such staff, thirdly, the saving of stationery, stamps, etc., which would result, and fourthly, if the solicitor does any of the conveyancing business himself, then similar savings in respect of the extraneous business for which he would now be released. I think that most solicitors who work out this sum will find that on this basis their practice would have been carried on at a loss during last year. It is this position from which I want the profession to save itself while it still has time. The history of the solicitors' profession is a history of ground lost to other professions and we cannot afford to allow conveyancing to be the next on the list. At the moment all that saves us is a half-inch circle of red paper stuck at the bottom of each document.

E. J. WARBURTON.

London, E.C.4.

Sir,—Mr. Warburton makes an exaggerated case and has laid himself open to the replies in your issue of 22nd October.

Nevertheless, in my opinion, his basic criticism is sound and I should like to support the thoughtful letter of Mr. Wickenden.

Is not the opposition in the profession to extension of registration of title based on this question of the smaller degree to which conveyancing would then subsidise the rest? Surely we would all welcome less work and should then be prepared to accept less pay. I cannot see that any system can survive which puts the interests of the profession before that of the public.

Brecon. W. M. JONES POWELL.

A Rating Anomaly

Sir,—We have recently come across a point in rating law which seems to us to be completely at variance with the fundamental principles of the taxation law of this country, and we should be interested to know if any of your readers have met this same point. We act for a client who was until recently a sub-tenant of a small shop. The tenant occupied the living accommodation above the shop and the entire unit had a rateable value of £13 per annum. Because of this the rates were paid by the owner of the property, and a weekly sum corresponding to our client's proportion of the rate was added to his rent which, of course, he paid to the tenant. He vacated the premises on the 16th July, and on the 18th July the local valuation officer made a proposal to increase the assessment to £18 per annum. Notice of the proposal was served on the owner of the premises and on the tenant, but as our client had already gone out of possession he was not deemed to be an occupier at the date of the proposal and no notice was served on him. Subsequently the proposed increase having come into effect it operated retrospectively from the previous 1st of April. The rateable value now being greater than £13 per annum rates became payable by the actual occupiers, and our client has received a demand note from the city treasurer for rates from the period 1st April to 16th July at the increased rate. As a result of this procedure he now finds himself in the position of having to pay the rate to the city treasurer on the basis of an assessment which he was given no chance to contest and to endeavour to recover from his former landlord the amount already paid to him included in his rent which the landlord refuses to hand over.

It seems to us that this is a case of taxation without notice or the opportunity to make any representation whatsoever. The valuation officer asserts that our client was not entitled to notice and no doubt he is right according to the letter of the relevant statutes. However, the principle seems completely wrong. The amount in question in this case is only small, but that is no justification of a breach of our concept of justice.

Sheffield, 1. DAVIDSON & CO.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

COURT OF APPEAL

RENT RESTRICTION: DISTINCTION BETWEEN "IMPROVEMENT" AND "REPAIR"

Morcom *v.* Campbell-Johnson and Others

Denning, Hodson and Morris, L.JJ. 6th October, 1955

Appeal from Westminster County Court.

The landlords of a sixty-year old block of flats incurred expenditure of some £10,000 on replacing the original old and worn water-borne drainage and cold-water systems by more efficient modern equivalents, and on lowering the area adjacent to the building which had been defective from its origin. On their application to the court for declarations that they were entitled to increase the standard rent of the tenants by an apportioned amount of 8 per cent. of the sum expended, as "expenditure on the improvement . . . of the dwelling-house (not including expenditure on . . . repairs)" within s. 2 (1) (*a*) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as amended, the county court judge held that the items were "improvements." The tenants appealed.

DENNING, L.J., said that the test as to whether the three items of work were improvements or repairs within s. 2 (1) (*a*) was this: If the work done was the provision of something new for the benefit of the occupier, that was, properly speaking, an improvement; but if it was only the replacement of something already there, which had become dilapidated or worn out, then, albeit that it was a replacement by its modern equivalent, it came within the category of repairs and not improvements. Applying that test to the drainage and cold-water systems, the work came within the category of repairs and not of improvements. As to the lowering of the area, though his lordship was not prepared to say that because expenditure was on an improvement off the site of the flat itself it could not qualify as an "improvement of the dwelling-house," it was difficult to say that this particular expenditure to the area was on the improvement of the flats or any individual flat. He would accordingly allow the appeal.

HODSON, L.J., agreeing, said that in considering whether or not anything was an improvement, it must be looked at from the point of view of the reasonable tenant objectively, because s. 2 (1) (*a*) provided for the landlord obtaining an increase of rent from a tenant.

MORRIS, L.J., delivered a concurring judgment. Appeal allowed.

APPEARANCES: *R. E. Megarry* and *John Silberrad* (*Baylis, Pearce & Co.*); *H. Heathcote-Williams*, Q.C., and *Stanley Rees* (*Trollope & Winckworth*).

[Reported by Miss M. M. HILL, Barrister-at-Law] [3 W.L.R. 497

CHANCERY DIVISION

MARRIED WOMEN'S PROPERTY ACT, 1882, s. 17: JURISDICTION: FOREIGN DOMICILE

***In re* Bettinson's Question**

Wynn Parry, J. 11th October, 1955

Adjourned summons.

A husband and wife who were both American citizens possessing a Californian domicile were at all material times resident within the jurisdiction. By January, 1955, the parties had separated, and in June, 1955, the husband commenced divorce proceedings in California. In April, 1955, the wife had removed a number of chattels from the husband's possession and in May, 1955, she had had withdrawn two sums of money from the joint banking accounts at two American banks. The husband took out the present summons under s. 17 of the Married Women's Property Act, 1882, asking for an order for the return of the chattels and for an account and inquiries in respect of the two sums of money. It was not in dispute that the Californian law as to community of property applied to both parties. By art. 172 of the Californian Civil Code the husband is given the management and control of the community personal property. It was contended for the wife that the court had no power to make an order under s. 17 of the Married Women's Property Act, since no question arose as to possession of or title to property within the meaning of that section, but only as to the management and control of property.

WYNN PARRY, J., said the husband's application appeared to be founded on the clearest principles and reasons of common sense, and on the basis that he had jurisdiction to make such an order he would decide to do so; but it was said that on the true construction of s. 17 of the Married Women's Property Act, 1882, he had no jurisdiction to make any such order, because under the law of the matrimonial domicile the doctrine of community of property applied to the spouses. It was pointed out that as the Californian law as to community of property applied, and as under that law the most conferred on the husband was the right to manage and control the property which was subject to the community doctrine, no question of possession, as that word was used in s. 17, could arise. He (his lordship) could not accept that argument. He saw nothing in the context of s. 17 to cut down the meaning of the word "possession," which, as had been said again and again in various authorities, was a word of very wide import. If a man was given the right by the relevant law—and he treated the law of California for this purpose as being the relevant law—to manage and control the whole of the property subject to the community of property, then he must be entitled to possession of that property, either to physical possession or to a degree of control which would enable him effectively to say what was to happen to that property. That degree of control appeared to be given to the husband by the law of California, and there was no substance in the argument that he had no jurisdiction. *Tunstall* v. *Tunstall* [1953] 1 W.L.R. 770; 97 SOL. J. 420, was wholly distinguishable from the present case because there was there no property or identifiable fund on which an order under s. 17 could operate. There would be an order directing the wife to deliver up to the husband the chattels taken by her and an order for the inquiries asked in respect of the sums withdrawn from the two banks in California. Order accordingly.

APPEARANCES: *D. A. Thomas* (*Rowe & Maw*); *Edward Morrison* (*Bull & Bull*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [3 W.L.R. 510

QUEEN'S BENCH DIVISION

CROWN: LIABILITY IN TORT FOR DEATH OF SOLDIER KILLED ON DUTY

Adams *v.* War Office

Glyn-Jones, J. 7th October, 1955

Preliminary point of law.

The Minister of Pensions issued a certificate to the effect that in so far as the death of a soldier who was killed while on duty by a shell which burst amongst troops taking part in an exercise was due to anything suffered by him as a result of the accident, "his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to an award under the Royal Warrant relating to the disablement or death of members of the force of which he was a member." An application for a pension by the parents of the soldier under the Royal Warrant of 1949 [Cmd. 7699] was refused by the Minister. In an action by the soldier's father, as administrator of his son's estate, against the War Office, alleging negligence and claiming damages on behalf of the estate, himself and his wife, under the Fatal Accidents Acts, 1846 to 1908, the Law Reform (Miscellaneous Provisions) Act, 1934, and the Crown Proceedings Act, 1947, the War Office relied on s. 10 of the Crown Proceedings Act, 1947, as a bar to the claim, and the father contended that his claim could not be defeated by the issue of a certificate by the Minister of Pensions which was followed by a refusal to grant any compensation or award. Section 10 (1) of the Crown Proceedings Act, 1947, provides that nothing done or omitted to be done by a member of the armed forces of the Crown shall subject him or the Crown to liability in tort for causing the death of another person in so far as it was due to anything suffered by that other person while he was a member of the armed forces of the Crown if "(*b*) the Minister of Pensions certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to an award under the Royal Warrant." Article 37 of the Royal Warrant of 1949 provides that the parent of a member of the military forces may be awarded a pension if he is in pecuniary need, and by art. 65 the Minister of Pensions shall administer and "shall be the sole interpreter of this . . . warrant."

GLYN-JONES, J., said that it had been agreed that the only certificate which would satisfy s. 10 (1) (*b*) of the Act was a certificate which bound the Minister to decide that the parents should be paid some pension, however small, that the certificate issued was not a certificate which declared that the parents were entitled to be paid something by way of a pension, and that it was not a valid certificate under sub-para. (*b*). He, his lordship, had come to the conclusion that his judgment must be in favour of the War Office. The issue by the Minister of Pensions of a certificate, the effect of which was that the death of the plaintiff's son was attributable to service, had the effect of entitling the plaintiff or his wife to make their claim under the Royal Warrant and entitling them, if upon that claim they satisfied the conditions of the warrant, to be paid a pension. Under art. 65 of the Royal Warrant, the Minister of Pensions was the sole judge as to whether or not the plaintiff or his wife satisfied the conditions of the warrant, and the fact that he had decided that they did not did not mean that the certificate was not a certificate within the meaning of sub-para. (*b*). Judgment for the defendants.

APPEARANCES: *Rodger Winn* (*Treasury Solicitor*); *R. F. Levy*, Q.C., and *J. E. S. Ricardo* (*Gouldens*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [1 W.L.R. 1116

The LIVERPOOL LAW CLERKS' SOCIETY announces the following syllabus of lectures—October, 1955 to March, 1956:—1955: October 18 to December 20, a course of ten lectures on Conveyancing by J. Turner, Esq., LL.M.; 1956: January 10, "Recent Developments in Law of Master and Servant" by A. Rankin, Esq., B.A., B.L.; January 17, "Carriage of Goods by Sea and Air" by A. Rankin, Esq., B.A., B.L.; January 24, "Commercial Law and the Commercial Court" by A. Rankin, Esq., B.A., B.L.; January 31, "Landlord and Tenant Act, 1954" by Gerson Newman, Esq.; February 7, "The Wills of the Rich" by J. J. Somerville, Esq., B.A., B.L.; February 14, "The Law and the Sea" by Jeffreys Collinson, M.A., B.C.L.; February 21, "The Welfare of the Child in English Law" by David Bulmer, Esq.; February 28, "Recent Cases on Divorce" by E. Somerset Jones, Esq., B.A.; March 7, "Law of Evidence" by R. A. H. Collinge, Esq., M.A.; March 14, "Fatal Accidents—Assessment of Damages" by Gerard Wright, Esq., B.C.L., B.A. The lectures will be delivered at the Law Library, Tower Buildings, Water Street, Liverpool, each Tuesday, at 5.30 p.m.

Proposing the toast of the Bench and Bar at PLYMOUTH LAW SOCIETY'S annual dinner on 14th October, Mr. A. E. Stedman, President, said it was perhaps unique that the Recordership of Plymouth, dating from the Borough Charter of 1439, was held at one time by a solicitor, Henry Woollcombe, who founded the Society in 1814. Two of his descendants were among present members.

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Coal Industry Nationalisation (Legal Proceedings) (No. 2) Regulations, 1955. (S.I. 1955 No. 1569.)

Exchange of Securities (No. 3) Rules, 1955. (S.I. 1955 No. 1562.) 5d.

Firemen's Pensions Scheme Order, 1955. (S.I. 1955 No. 1571.) 5d.

International Organisations (Immunities and Privileges of the World Health Organisation) (Amendment No. 2) Order, 1955. (S.I. 1955 No. 1210.)

London-Bristol Trunk Road (Thatcham Relief Road) Order, 1955. (S.I. 1955 No. 1550.)

Open-Cast Coal (Highway) Orders (Revocation) Order, 1955. (S.I. 1955 No. 1570.)

Ready-Made and Wholesale Bespoke Tailoring Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 1555.) 6d.

Stopping up of Highways (Kent) (No. 18) Order, 1955. (S.I. 1955 No. 1554.)

Stopping up of Highways (Lincolnshire—Parts of Lindsey) (No. 2) Order, 1955. (S.I. 1955 No. 1551.)

Stopping up of Highways (London) (No. 46) Order, 1955. (S.I. 1955 No. 1552.)

Stopping up of Highways (Middlesex) (No. 9) Order, 1955. (S.I. 1955 No. 1553.)

Stopping up of Highways (Nottinghamshire) (No. 4) Order, 1955. (S.I. 1955 No. 1564.) 5d.

Stopping up of Highways (Pembrokeshire) (No. 1) Order, 1955. (S.I. 1955 No. 1566.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, W.C.1. The price in each case, unless otherwise stated, is 4d. post free.]

POINTS IN PRACTICE

Rent Restriction—Transmission of Statutory Tenancy on Death of Tenant—Granddaughter Living with Tenant in Possible Breach of Tenancy Agreement

Q. In or about 1952, the tenant of a house (a widower) subject to the Rent Restrictions Acts, who had been living alone, allowed his granddaughter and her husband to come and live with him, she acting as the tenant's housekeeper. There was no sub-letting to the granddaughter but the rent book contained the usual clause prohibiting the tenant from sub-letting or taking in lodgers without the landlord's consent. The tenant has now died. Can the granddaughter claim to remain in the house under the provisions of s. 12 (1) (*g*) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, notwithstanding the fact that her occupation of the house was from its commencement in breach of the terms of the tenancy agreement? The landlord was unaware of her occupation until the tenant's death.

A. We assume that the granddaughter would have no other claim: i.e., that the widower was a statutory and not a contractual tenant when he died. We do, however, consider the proposition that the terms of the tenancy agreement were broken open to some doubt. We appreciate that these terms may be inferred from statements in a rent book: *Maley* v. *Fearn* (1947), 62 T.L.R. 693 (C.A.); *Moses* v. *Lovegrove* [1952] 2 Q.B. 533 (C.A.); but in our view it might be difficult to establish that the widower had either sub-let or taken in a lodger; see *Phillips* v. *Woolf* [1953] C.L.Y. 1966 (C.C.). If there was a breach, that fact would not, in our opinion, militate against the granddaughter's claim. The Increase of Rent, etc., Restrictions Act, 1920, s. 12 (1) (*g*), does not qualify the word "residing" by the expression "lawfully" (and can thus be contrasted with s. 15 (3), protecting sub-tenants to whom the premises or any part thereof have been lawfully sub-let); nor can it be said that the claimant would be seeking to take advantage of her own wrong, she not having been a party to the widower's agreement and the tenancy claimed being essentially a new one: *Tickner* v. *Clifton* [1929] 1 K.B. 207; *Moodie* v. *Hosegood* [1952] A.C. 61. We suggest that an attempt might be made to meet the claim by arguing that, though the granddaughter resided in the dwelling-house, she did not reside *with* the tenant, the fact that she held the office of housekeeper being relied upon. If the evidence showed that she had her own quarters, this issue, which is essentially one of fact (*Middleton* v. *Bull* [1951] 2 T.L.R. 1010 (C.A.)), might be resolved in the landlord's favour, support being found in *Edmunds* v. *Jones* (1952), 213 L.T. News. 62 (C.A.): did the claimant regard the house as her home rather than as the place where she worked and lived?

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 21 Red Lion Street, London, W.C.1.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Mortgage—Surviving Partner Mortgaging Partnership Property—Validity

Q. We are acting for a local bank who have consulted us regarding the title to property which is mortgaged to them. Four freehold properties belonged to two persons as part of their partnership property and the property had been conveyed to these two persons as joint tenants. One of the partners died and the surviving partner exercised the option contained in the partnership agreement to purchase the deceased partner's share of the business. The surviving partner then mortgaged the freehold properties to the bank as beneficial owner, which it appears he could not do as he was the surviving trustee. Subsequently the personal representative of the deceased partner conveyed the deceased partner's interest in the freehold properties to the surviving partner. Must the mortgages to the bank be receipted and fresh mortgages executed now that the surviving partner can mortgage as absolute owner? Or are the existing mortgages valid so that if the occasion arose the bank could exercise its power of sale? Or could a document be prepared and executed by the surviving partner without receipting the mortgages to make them effective so as to protect the bank?

A. The legal estate was in the partners as joint tenants upon trust to sell the same and hold the proceeds for themselves in the shares and manner provided for by the partnership agreement (see Partnership Act, 1890, s. 20 (2), and Law of Property Act, 1925, s. 36). After the death the legal estate remained in the survivor as sole trustee. As such he could convey, sell or mortgage it but not so as to over-reach the equitable interests, but it is clear that all the equitable interests are in him so that there is nobody who could complain. The only fault is that the mortgagor (in whom was the whole legal estate) mortgaged "as beneficial owner" and not "as trustee." We are told that the mortgage was after the survivor had exercised the option, but before the personal representatives of the deceased had formally conveyed the subject-matter of that option. In those circumstances we are not at all sure that the survivor was not, having exercised the option, beneficial owner, although the personal representatives had a lien for the price if it had not been paid in full. But whether or not that is the case we do not see that the mortgage is any the less valid because of such a misdescription of the mortgagor. It is our understanding that the only purpose of including such descriptions is to incorporate into the conveyance or mortgage the covenants set out in the Law of Property Act, 1925, s. 76. Accordingly we think the existing mortgages are perfectly valid.

Mortgage—Assignment of Lease and Mortgage back to Vendor without Interest

Q. A owns the leasehold interest in a house, Whiteacre. *A* wishes to sell his leasehold interest in Whiteacre to *B*, and *A* is willing for the purchase price to be paid by weekly or monthly

instalments, such instalments not to include any interest on the balance of the purchase price outstanding. A capital figure has been agreed as the purchase price, and it is estimated that on the basis of the present agreed instalments the full purchase price will not in effect be paid until the end of eight years from the date the contract is entered into. The vendor and purchaser are willing to carry their proposed arrangement into effect by means of an immediate assignment of the lease by the vendor to the purchaser and for the purchaser to mortgage the leasehold interest so assigned back to the vendor for the full purchase price. It is suggested that the mortgage should contain covenants by the mortgagor to repay the principal moneys by weekly or monthly instalments of principal only over a period of eight years, no interest on outstanding capital to be paid by the mortgagor to the mortgagee. At the end of the eighth year when all the principal has been repaid the mortgage will, of course, be discharged. (1) Is there any objection to preparing such a mortgage providing for the repayment of capital only by instalments (there is no precedent for this in any of the precedent books)? (2) The property is leasehold but the lease does not contain any clause requiring consent to assign, etc. Would written consent from the landlords have to be obtained for assigning and mortgaging? (3) The title is registered at H.M. Land Registry. We presume the Land Registry would have no objection to registering the mortgage in the form suggested.

A. (1) We see no reason whatever why money should not be advanced on mortgage without interest, and it has been decided in *Knightsbridge Estates Trust, Ltd.* v. *Byrne* [1939] Ch. 441 that it is competent to provide for repayment only by instalments. Whilst it may not be easy to find a precedent for such a mortgage, we have in fact met them in practice. (2) In the absence of any provision in a lease to the contrary the tenant may assign or under-let without consent (see *Doe. d. Mitchinson* v. *Carter* (1798), 8 Term Rep. 57; *Church* v. *Brown* (1808), 15 Ves. 258; *Clapman* v. *Edwards* [1938] 2 All E.R. 507). (3) For the reasons given in (1), above, we think the mortgage is perfectly legal and valid and we do not think H.M. Land Registry would have any objections to registering it or, indeed, could validly object if they were disposed to do so.

NOTES AND NEWS

Honours and Appointments

The Queen has been pleased to appoint Mr. FREDERICK HENRY CURTIS-BENNETT, Q.C., to be Chairman of the Court of Quarter Sessions for the County of Essex.

The Queen has been pleased to appoint Mr. CONOLLY HUGH GAGE and Mr. VIVIAN GERALD HINES to be Deputy Chairmen of the Court of Quarter Sessions for the County of Essex.

Mr. PAUL J. DENIS, of The Law Society Divorce Department, Birmingham, has been appointed Secretary of the Cardiff, Pontypridd and Merthyr Local Committees.

The Queen has been pleased to approve the appointment of Mr. A. E. FORBES, Secretary to the Ministry of Justice and Solicitor-General, Gold Coast, to be Puisne Judge, Kenya.

The Queen has been pleased to approve the appointment of Mr. D. B. W. GOOD as Puisne Judge, Federation of Malaya.

The Queen has been pleased to approve the appointment of Mr. M. J. P. HOGAN, C.M.G., Q.C., Attorney-General in the Federation of Malaya, to be Chief Justice of Hong Kong.

The Queen has been pleased to approve the appointment of Mr. TAN AH TAH as Puisne Judge, Singapore.

Mr. J. F. W. SIMS, senior assistant solicitor to Hove Corporation, has been appointed Town Clerk of Tanga, Tanganyika.

Personal Notes

Mr. W. T. S. Digby-Seymour, assistant solicitor for five years to Derbyshire County Council, is leaving Derby at the end of October to join a London firm of solicitors.

Miscellaneous

"Law and Justice" is the subject of a talk to be given by a barrister on 29th October at 9.25 p.m. in the Third Programme of the B.B.C.

Wills and Bequests

Mr. Ernest Henry Banks, solicitor, of Liverpool, left £103,232 (£59,603 net).

Mr. Ivor Llewelyn Phillips, solicitor, of Newport, left £9,699 (£9,085 net).

OBITUARY

MR. L. CLARK

Mr. Lyon Clark, O.B.E., of Nuthurst, Hockley Heath, who was associated with the office of Coroner at West Bromwich for fifty-seven years, died on 10th October, aged 81. He was admitted in 1894, and was prominent in many spheres of public work at West Bromwich.

MR. W. N. CURTIS

Mr. William Norman Curtis, solicitor, of Bath, died on 23rd October, aged 45. A native of Bradford, he was admitted in 1934, and had been deputy Town Clerk of Swindon and solicitor and secretary of the South Western Gas Board before taking up private practice.

MR. G. ESPLEY

Mr. George Espley, solicitor, of Wellington, Salop, died at Hastings on 18th October, aged 49. He was admitted in 1930 and was clerk to the Wellington Burial Joint Committee.

MR. H. C. B. MITCHELL

Mr. Harold Charles Barnes Mitchell, of Wokingham, formerly a solicitor in India, has died, aged 71.

SOCIETIES

The UNION SOCIETY OF LONDON announces the following debates to be held in the Common Room, Gray's Inn, at 8 p.m.: Wednesday, 2nd November, "That the Labour Party has outlived its usefulness"; Wednesday, 9th November, "That sponsored television is a failure"; Wednesday, 16th November, "That women's place is in the City" (joint debate with the Sylvan Debating Club); Wednesday, 23rd November, "That the Rents Acts should be abolished."

PRINCIPAL ARTICLES APPEARING IN VOL. 99

1st to 29th October, 1955

Lists of articles published earlier this year appear in the Interim Index (to 25th June) and at p. 664, *ante* (2nd July to 24th September)

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